

CITY DRAFT 2/05/20

**FUNDING, OPERATIONS AND ADMINISTRATIVE AGREEMENT
BETWEEN
THE AUSTIN ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION
AND
THE CITY OF AUSTIN**

This Funding, Operations and Administrative Agreement (this "Agreement") is entered into as of _____, 2020 between the CITY OF AUSTIN, TEXAS, a Texas home rule municipal corporation (the "City"), and the AUSTIN ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION, a Texas local government corporation under Texas Transportation Code Chapter 431, Subchapter D (the "Corporation").

RECITALS

WHEREAS, on August 3, 1995, the City Council of the City passed a resolution adopting a 1995-1996 community development program (the "Program") in accordance with Texas Local Government Code Chapter 373; and

WHEREAS, the Program included the development of the Central City Entertainment Center, currently known as the Millennium Youth Entertainment Complex (the "MYEC"); and

WHEREAS, on November 16, 1995, the City Council of the City adopted a resolution approving the creation of the Corporation as a local government corporation under Texas Transportation Code Chapter 431, Subchapter D, for the purpose, among others, of developing and operating the MYEC; and

WHEREAS, on July 18, 1996, the City Council of the City adopted an ordinance authorizing the execution and delivery of certain notes and contracts (the "HUD Documents") relating to the \$8,875,000 HUD Section 108 guaranteed loan to finance the Corporation's construction of the MYEC; and

WHEREAS, on April 2, 2009 the City Council of the City, through Resolution 20090402-015, amended the Corporation's Articles of Incorporation and approved the Corporation's amendment of its Bylaws to expand the number of voting Board of Director positions from seven to nine, creating positions 8 and 9; and

WHEREAS, on December 14, 2017 the City Council of the City, through Resolution 20171214-026, appointed and reappointed the Corporation's Board of Directors Positions one through nine; and

WHEREAS, on or about July 16, 2016, the City's and the Corporation's responsibilities on the construction project program phase (to develop and construct the MYEC and to satisfy the provisions of the HUD loan guarantee, Section 108 of the Housing and Community Development Act of 1974 Agreement) were fulfilled, and this Agreement is intended to detail the City's and the

Corporation's responsibilities related to the ongoing financial support, operations, and administrative services with respect to the MYEC; and

WHEREAS, on August 8, 2019, the City Council of the City, through Resolution 20190808-068, appointed and reappointed the Corporation's Board of Directors positions 1, 2, 3, 6, 7, 8, and 9; and

WHEREAS, the City and the Corporation desire to enter into this Agreement to evidence the arrangements for the continued operation and funding of the Property, as defined below, including the City's and the Corporation's duties regarding operation of the Property; and

WHEREAS, the City and the Corporation are authorized to enter into this Agreement pursuant to the provisions of Texas Transportation Code Chap. 431, Subchapter D and Texas Local Government Code Chap. 394; and

WHEREAS, on _____, 2019, the City Council of the City authorized the execution of this Agreement between the City and the Corporation; and

WHEREAS, on _____, 2019, the Board of Directors of the Corporation authorized the execution of this Agreement between the City and the Corporation; and

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are acknowledged and confessed, the City and the Corporation agree as follows:

ARTICLE 1 DEFINITIONS

Advance: An advance of funds under this Agreement.

Allowable Costs: Shall have the meaning assigned to it in Section 3.3.

Annual Budget: The budget approved by the City Council and adopted by the Corporation setting forth the Corporation's annual operating revenues and expenses associated with the Property, as the same may be amended from time to time with the prior approval of the City Council.

Billing Package: The documentation described in **Exhibit A** that the Corporation shall submit to the City to receive an Advance.

Board: The Board of Directors of the Austin Rosewood Community Development Corporation.

Bona Fide Emergency: An incident or occurrence, including, but not limited to, an event of Force Majeure (as that term is defined in Section 10.8 below) that is reasonably likely to result in the loss of property, or closure of the Property to the public, but for the timely expenditure of funds on repairs.

Budgeted/Actual Variance Report: The report the Corporation is required to submit to City pursuant to Section 4.6(c) of this Agreement.

Construction Contracts: All contracts and agreements, written or oral, between the Corporation and any construction contractor, between any of the foregoing and any construction subcontractor and between any of the foregoing and any other Person relating in any way to repair to, renovation of, or new construction on the Property, including the performing of labor on a construction project or the furnishing of specially fabricated materials in connection therewith.

Default: An event which with the passage of time, giving of notice, or both would constitute an Event of Default, as identified in Article 7 of this Agreement.

Event of Default: Any event described in Article 7.

Facility Manager: The firm or person, acceptable to the City, with whom the Corporation enters into a Facility Management Agreement to manage the day-to-day operations of the Property.

Facility Management Agreement: The agreement between the Corporation and the Facility Manager authorizing the Facility Manager to manage the day-to-day operation of the Property, which Facility Management Agreement shall be acceptable in form to the City.

Funding Documents: This Agreement and all other documents now or hereafter executed by the Corporation or any other Person to evidence, secure or guarantee the performance and discharge of the Obligations.

Governmental Authority: Any court, board, agency, commission, office for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

Land: The real estate or interest therein described in **Exhibit B** and all fixtures and improvements situated thereon and all rights, titles and interests appurtenant thereto.

Leases: All leases, subleases, licenses, concessions or other agreements (written, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, any part of the Property, together with all security and other deposits made in connection therewith, and all other agreements, such as professional service contracts, utility contracts, maintenance agreements and services contracts, which in any way relate to the design, use, occupancy, operation, maintenance, repair, enjoyment or ownership of the Property.

Legal Requirements: (1) All present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority related to the Corporation, the Land or the Property, including, without limitation, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (2) all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Land or

the Property or the ownership, use or occupancy thereof, (3) the Corporation's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (4) all Leases, (5) any other contracts (written or oral) that relate in any way to the Land or the Property and to which the Corporation may be bound, including, without limitation, any lease or other contract pursuant to which the Corporation is granted a possessory interest in the Land, and (6) local, state or federal requirements.

Lien: Any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on common law, statute or contract, including, without limitation, the lien or security interest arising from a deed of trust mortgage, encumbrance, pledge, security agreement, conditional sale, trust receipt, lease, consignment, or bailment for security purposes.

Obligations: All of the covenants, conditions, warranties, representations and other obligations made or undertaken by the Corporation and City, or others, as set forth in the Funding Documents.

Operational Guidelines: The guidelines established by the City that set forth the policies and procedures for operation of the Property, as set forth in **Exhibit C**.

Party: Either the City or the Corporation; collectively, the City and the Corporation are the "Parties."

Performance Report: The report the Corporation is required to submit to the City pursuant to Section 4.6(c) of this Agreement.

Person: Any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

Property: The Land, improvements on the Land, and Leases, if any, generally referred to as the Millennium Youth Entertainment Complex, which is located at 1156 Hargrave Street, Austin, Texas 78702.

Revenue Income: Shall mean all receipts (including, without limitation, seat user fees and surcharges), revenues, income, and cash received or collected, as determined on an accrual basis, by Corporation (1) for the use of, operation, or admission to, the Facility or any portion thereof. (2) for the right to sell, or in respect of the sale of, any product or advertisement in the Facility including all rents, royalties, and concessions from tenants, concessionaires, and licenses; (3) from interest on or proceeds of investment of any accounts required to be maintained hereunder; (4) for lease or use of the Corporation's equipment; or (5) as fees for services rendered at the Facility, including parking.

Receipts: A receipt of funds in connection with the Property.

Revenue Account: Shall have the meaning assigned to it in Section 4.5.

Commented [WM1]: Does the Corporation do its accounting on an accrual or cash basis?
Waiting to hear back from Corp.

Statement of Work: Subject to available funds, the operation, management, administration, maintenance, repair and improvements of the Millennium Youth Entertainment Center.

**ARTICLE 2
PURPOSE OF AGREEMENT, TERM & CONTRACT MANAGERS**

2.1 Purpose: The purpose of this Agreement is to provide for the operation, management, maintenance of the Property and the Land in order to aid the City by providing a public community, sports, entertainment, convention and exhibition venues and facilities for the benefit of the City and the public. The Corporation shall enter into a Facility Management Agreement with a Facility Manager to operate, manage and use the Property solely for such purposes. The Corporation shall not use the Property or the Facilities for any purpose that would result in the interest payable on any bonds or indebtedness issued by the City for the construction or development of the Facilities no longer being exempt from federal income taxation.

Section 2.2 Term: This Agreement shall commence on the date first above stated and shall end on September 30, 2028, unless extended, suspended, or terminated in accordance with other applicable conditions and provisions of this Agreement. The Parties, with the respective approval of their governing bodies, may extend this Agreement for up to three additional terms, with the length of each additional term to be agreed to in writing by the Parties. If the initial term of this Agreement and any authorized period of renewal expire, the Parties agree to hold over under the terms and conditions of this Agreement for a period of time as may be reasonably necessary, not to exceed 120 days unless otherwise agreed to in writing by the Parties, in order to renew this Agreement. The City's Obligations during the Term are contingent upon the City Council's appropriation of current revenue for each fiscal year during the Term.

Section 2.3 Contract Managers: The following shall serve as the Contract Managers for this Agreement and shall be notified in the event any notice to a Party is required under the Agreement:

City of Austin

Kimberly McNeeley (or successor), **Director**
Parks and Recreation Department
200 S. Lamar Blvd.
Austin, Texas 78704
Kimberly.McNeeley@austintexas.gov

Austin Rosewood Community Development Corporation

Ghislane Jean (or successor), Secretary
1156 Hargrave Street
Austin, TX 78702
qidadam@divineandconjure.com

Commented [WM2]: This is fine. FYI, The Corporation requested that it report to ACM Shorter. Checking on how this request was resolved

Commented [MM3R2]: Just as an FYI, Kimberly McNeeley asked ACM Shorter about this and he stated his belief that PARD should be the Contract Manager.

ARTICLE 3
CITY FUNDING TO CORPORATION

Section 3.1 Advances: Subject to the terms of this Agreement, the City will make, and the Corporation will accept, Advances not to exceed the amount of the Corporation's Annual Budget. To receive an Advance from the City, the Corporation must submit a Billing Package to the City's Contract Manager. Advances will be made by the City to the Corporation quarterly, or as otherwise agreed to in writing by the Corporation and the City pursuant to the terms of this Agreement. For quarterly Advances, the Corporation must submit Billing Packages to the City's Contract Manager no sooner than ten calendar days before October 1st, ten calendar days before January 1st, ten calendar days before April 1st, and ten calendar days before July 1st.

The City shall pay Advances to the Corporation within a reasonable time, not to exceed thirty (30) calendar days, following receipt of the Billing Package, provided it is complete and accompanied by documentation as required in this Agreement. The City will endeavor to process quarterly Advances in ten (10) calendar days.

Advances shall be disbursed (a) by depositing the amount into the Revenue Account, or (b) by any other method the City and the Corporation may mutually from time to time elect in writing. Under no circumstances shall any portion of an Advance be used for any purpose other than the operation of the Property as set forth in the Annual Budget, as may be amended from time to time, submitted by the Corporation to the City.

Section 3.2 Advances Not Required in Certain Circumstances: Notwithstanding anything to the contrary contained in or inferable from any of the above, City shall not be required to make any Advance of funding hereunder if, at the time of the requested Advance, any of the following exists:

- (a) An Event of Default;
- (b) An order or decree in any court of competent jurisdiction exists enjoining or prohibiting the Corporation, the City, or both, from performing their respective Obligations under this Agreement;
- (c) The City has failed to appropriate funds for its Obligations under this Agreement, or if there are no other lawfully available funds for this Agreement. It is expressly understood that this Agreement in no way obligates the City's General Fund or any other monies or credits of the City of Austin;
- (d) Any cost of operating the Property:
 - 1. has been paid, reimbursed or is subject to payment or reimbursement, from any other source other than Corporation's own funds;
 - 2. was incurred prior to the beginning date or after the ending date specified in Section 2.2 (except for those costs incurred between the completion of a term of a prior Agreement and the beginning of the term of a subsequent or substitute Agreement), unless specifically authorized in writing by the City; or
 - 3. is not incurred in substantial accordance with the terms of this Agreement including all exhibits attached hereto;
- (e) Any cost or portion of a cost which is incurred by Corporation after City has requested that Corporation furnish data or information to City concerning such action or cost prior to

Commented [MM4]: As I think we discussed earlier, PARD needs to understand what costs we're talking about before it can agree to this provision. What costs are anticipated to be incurred between now and when the Agreement is finalized? Just the usual ones or will there be anything out of the ordinary?

proceeding further, unless and until Corporation is advised by City to proceed, such notice to proceed to be provided by the City no later than five (5) business days after receipt from the Corporation of all requested data or information; or

- (f) Except in the event of payment of a cost incurred as a result of a Bona Fide Emergency, payment to any party, other than to the Corporation itself, for any monies or for provision of any goods or services that was previously made by the Corporation to another party.

Section 3.3 Allowable Costs:

- (a) Costs will be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and in conformance with the standards and provisions of the Obligations and the Annual Budget.
- (b) Even if included in the Annual Budget, City's prior written authorization is required for any of the following to be considered an Allowable Cost:
 1. Encumbrance or expenditure during any one-month period which exceeds one-twelfth of any budgeted line item for personnel costs, if any, as specified in the Annual Budget.
 2. Except in cases of a Bona Fide Emergency, any subcontract in an amount greater than \$5,000. In the event of a Bona Fide Emergency, Corporation must seek and obtain City written authorization as soon as practicable, but no later than three business days following the discovery of the Bona Fide Emergency.
 3. Out-of-town travel, meals, lodging, and entertainment, including, but not limited to, fees for attending out-of-town meetings, seminars, or conferences.
 4. Alterations or improvements to the Property.
 5. Any alterations, deletions or additions to the personnel schedule incorporated in the Annual Budget.
 6. Costs or fees for temporary employees or services in an amount greater than \$5,000.
 7. Any fees or payments for consultant services in an amount greater than \$5,000.Prior written authorization for these costs shall be obtained from the Director of PARD or, for amounts that exceed the City Manager's authority, from City Council.
- (c) Requests for prior approval are the Corporation's responsibility and should be made within sufficient time to permit a thorough review by the City. Written approval by the City must be obtained prior to the commencement of procedures to solicit or purchase services, equipment or real or personal property. Any procurement or purchase which may be approved under the terms of this Agreement must be conducted in its entirety in accordance with the provisions of this Agreement and its exhibits and with State and local procurements laws and procedures.

Section 3.4 Excess Payments: The Corporation shall refund to the City, any sum of money which has been paid by the City and which the City at any time thereafter determines:

- (a) has resulted in overpayment to the Corporation; or
- (b) has not been spent strictly in accordance with the terms of this Agreement; or is not supported by adequate documentation to fully justify the expenditure.

The City shall provide written notice to the Corporation of any overpayment or error in spending

or documentation. Within ten (10) business days of receipt of the notice, the Corporation shall submit to the City a written response to the notice and shall have thirty (30) business days from receipt of the notice from the City to refund any excess payments. The parties may agree in writing to extend these timeframes.

Section 3.5 Disallowed Costs: Should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing by the City or any other governmental agency with appropriate jurisdiction, and after the Corporation has been given an opportunity to respond to, and where applicable to cure, any outstanding issues, the Corporation will refund such amount to City. The City shall provide written notice to the Corporation of any overpayment or error in spending or documentation. Within ten (10) business days of receipt of the notice, the Corporation shall submit to the City a written response to the notice and shall have thirty (30) business days from receipt of the notice from the City to refund any disallowed costs. The parties may agree in writing to extend these timeframes.

Section 3.6 De-obligation of Funds: In the event that actual expenditures deviate from the Corporation's provision of a corresponding level of performance, as specified in the Statement of Work, the City hereby reserves the right to re-appropriate or recapture any such under-expended funds.

Section 3.7 Program Income: The City and the Corporation will enter into a separate agreement to address Program Income. Such separate agreement shall incorporate, directly or by reference, the entirety of this Agreement. Program Income includes, but is not limited to, gifts of money or other things of value and earnings of the Corporation realized from activities undertaken in accordance with this Agreement or from the Corporation's management of funding provided or received hereunder. Such earnings include, but are not limited to, income from interest, usage or rental fees, income produced from Agreement-supported services of individuals or employees or from the use of equipment or facilities of the Corporation provided as a result of this Agreement, or payments from clients or third parties for services rendered by the Corporation under this Agreement.

Commented [MM5]: I don't think we can incorporate an agreement that doesn't yet exist.

ARTICLE 4

THE CORPORATION'S WARRANTIES, REPRESENTATIONS, AND COVENANTS

Corporation's Warranties and Representations:

Section 4.1 The Corporation unconditionally warrants and represents to the City that the Corporation will satisfy all Legal Requirements necessary to carry out its Obligations under this Agreement.

Corporation's Covenants to the City: The Corporation hereby unconditionally covenants with the City as follows:

Section 4.2 Operation and Management of the Property: The Corporation shall operate the Property in accordance with the Operational Guidelines attached as **Exhibit C**. The Corporation shall at all times have in place a Facility Management Agreement with respect to the Property.

Any Facility Management Agreement must be approved in writing by the City. The Corporation shall oversee and monitor the activities of the Facility Manager and report to the City as required by this Agreement.

Subject to this Agreement, the Corporation may engage in the following activities while operating the Property:

- (a) contract for the development, improvement, construction, operation, and maintenance of the Property and related fixtures, equipment, facilities and amenities;
- (b) accept and receive from any Person gifts of money or other things of value for the purpose of operating, improving, equipping, or promoting the Property;
- (c) accept and receive funds appropriated by the City pursuant to this Agreement for the purpose of operating, improving, equipping, or promoting the Property;
- (d) advertise the Property for the purpose of attracting visitors, tourists, residents, and members of the community to the Property;
- (e) enter into contracts for the purpose of fulfilling its Obligations to operate the Property; and
- (f) hold public events consistent with the provisions of this Agreement.

Section 4.3 Affirmative Covenants: During the Term of this Agreement, the Corporation shall:

- (a) permit the City and its representatives to enter upon the Land and into the Property to inspect, audit and perform improvements;
- (b) comply materially with all Legal Requirements;
- (c) comply with the accessibility provisions of (i) the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., (ii) the Texas Architectural Barriers Act, Texas Govt. Code Ch. 469, (iii) the Americans with Disabilities Act Accessibility Guidelines, and (iv) the Texas Accessibility Standards.
- (d) comply with the Texas Public Information Act, Texas Govt. Code Ch. 552, and with applicable City record retention policies.
- (e) use all Advances made to it by the City for, and only for, payment of the costs itemized in the Annual Budget and under no circumstances use, directly or indirectly, any portion of such Advances for any other purpose;
- (f) obtain and maintain, in full effect, insurance policies in the amounts, and on terms approved by the City, as described in **Exhibit D**;
- (g) furnish the City at least annually in connection with the submission of the Annual Budget, with a current list of contractors, subcontractors, materialmen, vendors, artisans and laborers performing work on the Property;
- (h) store at the Property, or at other locations approved by the City in writing, all materials acquired or furnished for operation of the Property, but not affixed or incorporated into the Property, in each case under adequate safeguards to minimize the possibility of loss, theft, damage or commingling with other materials or projects;
- (i) upon demand of the City, correct any structural defect in the Property, and no Advance shall waive the City's right to require compliance with this Section 4.3 with respect to any such defects; and
- (j) comply fully with all applicable federal, state, and local health, safety, and environmental

laws, ordinances, rules and regulations in the operation and management of the Property, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern.

Section 4.4 Negative Covenants: During the Term of this Agreement, the Corporation shall not:

- (a) use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, any portion of the Property for any purpose which violates any Legal Requirement or in any manner which may be dangerous unless safeguarded as required by law or which may make void, voidable or cancelable the premium of any insurance then in force with respect thereto.
- (b) create or place, permit to be created or placed or, through any act or failure to act, acquiesce in the creation or placing of, or allow to remain, any Lien on the Property (or any portion thereof). If any such Lien is asserted against the Property (or any portion thereof), the Corporation shall promptly give the City notice thereof. The notice shall specify who is asserting such Lien and shall detail the origin and nature of the underlying claim giving rise to the asserted Lien.
- (c) enter into any contract with any party, other than City, for the demolition, construction, reconstruction, rehabilitation, use, maintenance, operation, or occupancy of any portion of the Property for any purpose without first:
 - 1. Soliciting bids, requests for qualifications, or requests for proposals to the extent and in the same manner that the City is required by its policies and laws to obtain goods or services, or construct any improvements; and
 - 2. Obtaining City's prior written approval, and, in the case of a contract in excess of the amount that requires City Council approval pursuant to the Article VII, § 15 of the City Charter, receiving City Council approval by resolution adopted at a meeting of the City Council prior to the Corporation entering into the contract.

Section 4.5 Revenue Account: The Corporation shall maintain a special account (the "Revenue Account") into which Receipts (but no other funds) will be deposited and against which checks shall be drawn only for payment of bills for labor and materials incident to the operation of the Property, for payment of any Program revenue income due the City under this Agreement, and for other items in the Annual Budget. After a Default, the City may apply funds on deposit in the Revenue Account to the satisfaction of any covenant or condition hereof. The Corporation further covenants that:

- (a) The Revenue Account shall contain only the funds received pursuant to this Agreement, including Advances received from the City, and that no other funds shall be mingled with funds in such account. The Corporation shall support all checks and withdrawals from said account with itemized documentation of costs under this Agreement.
- (b) The City shall have a lien upon any balance in the Revenue Account paramount to all other liens, which lien shall secure the repayment of any advance payment made hereunder. Corporation further covenants it will execute any and all security agreements and other documents City determines necessary to evidence said lien.

- (c) Said account shall be maintained, under conditions approved by the City and in a financial institution, with Federal deposit insurance coverage and the balance, if any, exceeding the Federal deposit insurance coverage shall be collaterally secured.

Section 4.6 Reports, Meetings, Information, and Annual Budget:

- (a) At such times and in such form as City may require, and upon reasonable advance notice, Corporation shall furnish such statements, records, reports, data and information, as City may request and deem pertinent to matters covered by the Agreement.
- (b) On or before January 1st of each year during the Term of this Agreement, the Corporation shall provide the City's Contract Manager with a draft Annual Budget for the next following fiscal year; provided, however, that the Corporation shall provide the first draft Annual Budget under this Agreement within thirty (30) days of the last date of execution of the Agreement by the Parties. The City's Contract Manager (or his/her designee) shall provide comments to, or indicate her approval of, the draft Annual Budget in writing within fourteen (14) calendar days following receipt. Any City comments received by the Corporation shall be taken into account in preparing a proposed final Annual Budget. The Corporation shall provide the proposed final Annual Budget to the City's Contract Manager and the City Council shall vote on whether to approve the Annual Budget. Upon the City Council's approval of the Annual Budget, the Corporation shall vote on whether to adopt the Annual Budget. Within fifteen (15) calendar days following adoption of the Annual Budget, the Corporation shall provide the City's Contract Manager with a fully executed copy.
- (c) A Performance Report and Budgeted/Actual Variance Report, in a form required by the City, shall be submitted to the City by the Corporation on a periodic basis, but not less often than semi-annually, as determined by the City. The Corporation agrees to gather information and data relative to all programmatic and financial reporting as of the beginning date specified in Section 2.2 (the beginning of the Term), and shall make available to the City the following original information and material for the applicable period:
 - 1. Cash disbursements and receipts journal;
 - 2. Bank reconciliations for all bank accounts described in Section 4.5 of this Agreement;
 - 3. Invoices that support all expenditures;
 - 4. All rentals entered into with regard to the Property;
 - 5. Documents that support all procurements;
 - 6. Contracts entered into;
 - 7. Program Income required to be remitted to the City pursuant to Section 3.7(b) of this Agreement;
 - 8. Proof of insurance on the Property; and

9. Any additional information or material the City may reasonably request concerning this Agreement.

Section 4.7 Audit:

- (a) The Corporation agrees that representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all records of Corporation related to the performance under this Agreement. The Corporation shall have the right to have its own representative present during, and involved in, any audit. The Corporation shall retain all such records for a period of three years or until all audit and litigation matters that the City has brought to the attention of the Corporation are resolved, whichever is longer. The Corporation agrees to refund to the City any overpayments disclosed by any such audit, and which remain unresolved by the Corporation and the City.
- (b) The Corporation shall include a notice related to subsection (a) above in all contractor or subcontractor agreements entered into in connection with this Agreement.

Section 4.8 Operation of the Property by Facility Manager: The Corporation shall enter into or maintain an agreement with a Facility Manager in accordance with this Agreement and the Facility Management Agreement. The Facility Manager will manage the day-to-day operation of the Property.

**ARTICLE 5
ACCESS TO PROPERTY AND INFORMATION**

Section 5.1 Inspection, Monitoring and Evaluation: The City, through its officers, agents or employees, may, at all reasonable times:

- (a) Enter upon the Property and inspect it to confirm that it complies with all requirements of this Agreement; and
- (b) Examine, copy and make extracts of, the books, records, accounting data and other documents of the Corporation that relate in any way to the Property, including without limitation, all permits, licenses, consents and approvals of all Governmental Authorities having jurisdiction over the Corporation or the Property and all the relevant books and records of contractors and subcontractors supplying goods or services for the construction of any capital improvements to the Property. All contracts let or amended by the Corporation or its contractors and subcontractors after the date hereof relating to construction of capital improvements will permit the foregoing inspection rights, except where such rights have been waived by the City in writing.

Section 5.2 Corporation's Responsibilities: The Corporation is responsible for all aspects of the Corporation's business and conduct in connection with the Property.

ARTICLE 6
CITY'S ADMINISTRATIVE SERVICES TO CORPORATION

Section 6.1 City's Performance: The City agrees to perform Administrative Services, as defined herein, on behalf of the Corporation in accordance with the terms and conditions as detailed in this Agreement. The City agrees to provide general oversight of corporate activities that would be otherwise be performed by the Corporation, to post notices of Board meetings in compliance with the Texas Open Meetings Act, to make required filings with the Texas Secretary of State, and to provide such other services as the Parties may from time to time agree to in writing (the "Administrative Services").

Section 6.2 Compliance with Laws: The City's performance of the Administrative Services shall be in material compliance with all federal, state, and local laws, regulations, and authorities.

Section 6.3 Forwarding of Notices and Requests and Reports due: As part of its Administrative Services, City will forward notices, requests, or reports that are directed to Corporation or materially concern the Corporation, within 72 hours of receipt. Such notices, requests, or reports may include, but are not limited to, public information requests made under the Texas Public Information Act, communications requesting reports from the Internal Revenue Service, and communications from the Texas Secretary of State.

Section 6.4 No Compensation to City: It is expressly understood and agreed that the City will provide Administrative Services to the Corporation without monetary compensation.

Section 6.5 City's Failure to Perform: If, at any time, the City is unable to perform the Administrative Services, or if the City fails to adequately perform the Administrative Services, the Corporation shall send notice of such inability or failure to the City. If the City fails to correct its inability or failure within thirty (30) calendar days of such notice, the Corporation may at any time, and without further notice, suspend or change administrative services, or take other lawful measures. Corporation may, at its option, terminate this Article 6 of the Agreement in whole or in part in the event of such inability or failure by the City which is not cured by the City.

ARTICLE 7
EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default hereunder:

Section 7.1 Conditions to Advances: If, at any time, the Corporation is unable to satisfy any requirement or cure any circumstance specified in Article 3, the satisfaction or curing of which being precedent to its right to receive an Advance hereunder, and such inability continues for a period in excess of thirty (30) calendar days.

Section 7.2 Covenant Defaults: If, at any time, the Corporation is unable to satisfy any of its covenants or cure any circumstance specified in Article 4, the satisfaction or curing of which being precedent to its right to continue to satisfy any covenant hereunder, and such inability continues for a period in excess of thirty (30) calendar days.

Commented [WM6]: Not clear what these will entail. Possibility for overlap with Facility Manager's responsibilities. May be useful to better define

Commented [MM7R6]: UPDATE: per my discussion with Kimberly, please propose a definition for Administrative Services that PARD can review.

Waiting to hear from Corp.

Commented [MM8R6]: In the interest of resolving this issue, PARD proposed this definition.

ARTICLE 8 REMEDIES

Section 8.1 Rights; Remedies and Recourses: Upon the happening of any Event of Default, the City may, in addition to any and all other rights, remedies and recourses otherwise available at law or in equity:

- (a) take exclusive possession of the Property;
- (b) operate the Property;
- (c) execute in the Corporation's name all applications, certificates, and other instruments which may be required to operate the Property;
- (d) do any and every act with respect to the operation of the Property which the Corporation may do in its behalf; and
- (e) Employ such contractors, subcontractors, agents, attorneys, architects, accountants, watchmen, and inspectors as the City may deem desirable to accomplish any of the above purposes.

Upon the happening of any Event of Default, the Corporation constitutes and appoints the City its true and lawful attorney-in-fact with full power of substitution to take any and all of the actions described in this Section, which power of attorney is irrevocable. All sums expended by the City for any of the above purposes shall be Advances and shall be secured by this Agreement.

Section 8.2 Corporation's Indemnity: So long as this Agreement is in effect, the Corporation shall, to the extent allowed by law and subject to the limitations set forth in Section 8.3 below, indemnify and hold the City harmless from and against all liability, loss, cost, damage or expense which the City may incur under or by reason of this Agreement, or by reason of or in defense of all claims and demands whatsoever which may be asserted against the City arising out of this Agreement, excluding all liabilities arising from the City's sole or gross negligence or willful misconduct (the "Indemnified Claims"). If the City incurs any such liability, loss, cost, damage or expense, the Corporation shall, promptly upon request and subject to the limitations set forth in Section 8.3 below, pay the amount thereof, together with all reasonable attorneys' fees and interest, to the City.

Section 8.3 Limitation of Corporation's Liability: The Parties acknowledge and agree that the Corporation's liability for an Indemnified Claim is limited to the total amount funded by the City in the fiscal year in which the occurrence giving rise to the Indemnified Claim occurred, plus any insurance proceeds payable to the Corporation in connection with the Indemnified Claim, less the Allowable Costs for the fiscal year.

8.4 Limitation of Directors' Liability: No Director of the Corporation shall be personally liable to the Corporation for any payment under this Agreement or to the City for any Indemnified Claim where such liability arises, in whole or in part, out of an act or omission of the Director in his/her capacity as Director, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (c) for any transaction from which the Director received an improper benefit, regardless of whether the benefit resulted from an act taken within the scope of

Commented [WM9]: Very concerned about requiring the Corporation to indemnify the City for its own intentional or willful acts.

Commented [MM10R9]: I have added back the original language because it defines what is excluded from the Corporation's indemnity obligations.

the Director's office, or (d) for acts or omissions for which the liability of a Director is expressly provided by statute.

ARTICLE 9 OFFSET FOR TAXES OWED AND FUNDING OUT

Section 9.1 Offset for Taxes Owed: The Corporation acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of §2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed City of Austin.

Section 9.2 Funding Out: The Corporation acknowledges that the City has provided notice that the City's payment obligations to Corporation are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. The City shall provide the Corporation reasonable notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit City to pay its obligations under the Agreement.

ARTICLE 10 GENERAL TERMS AND PROVISIONS

Section 10.1 No Waiver: Any failure by a Party to insist, or any election by a Party not to insist, upon the counter-Party's substantial performance of any of the terms, provisions or conditions of the Agreement shall not be deemed to be a waiver of them or of any other term, provision or condition thereof, and the Party may at any time thereafter insist upon substantial performance by the counter-Party of all of them. In specific, no Advance by the City absent the Corporation's substantial compliance with Article 3 shall in any way preclude the City from thereafter declaring such failure to comply to be an Event of Default hereunder.

Section 10.2 Modification: This Agreement may not be amended, waived, discharged or terminated orally, but only by an instrument executed by both Parties. All amendments or changes to this Agreement must be mutually agreed upon in writing and duly executed by both Parties.

Section 10.3 Applicable Law: This Agreement has been executed under, and shall be construed and enforced in accordance with, the laws of the State of Texas.

Section 10.4 Severability: If a forum of competent jurisdiction determines that a term or provision of this Agreement is void or unenforceable, the remainder of this Agreement remains effective to the extent permitted by law.

Section 10.5 Successors and Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and legal representatives. A party to this Agreement may not assign or transfer its interests under this Agreement.

Section 10.6 Notices: All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, by delivering same in-person, by commercial courier to the intended addressee, or by e-mail. Notice so mailed shall be effective upon its deposit in the custody of the U.S. Postal Service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses, including e-mail addresses, of the Parties shall be as set forth in this Agreement; however, either Party may change its address for notice hereunder to any other location within the continental United States by giving 30-days' prior notice to the other Party in the manner set forth hereinabove.

Section 10.7 Headings: The Article and Section entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles and Sections.

Section 10.8 Force Majeure: Each Party to this agreement agrees to excuse the failure of the other Party to perform its Obligations under this Agreement to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this Agreement, but only if and to the extent the event or circumstance is not within the control of the Party seeking to have its performance obligation excused thereby and which the Party was unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, but are not limited to, acts of God, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do not include economic or market conditions which affect a Party's cost but not its ability to perform.

The Party invoking Force Majeure shall give timely and adequate notice to the other Party by e-mail or telephone confirmed promptly in writing and shall use due diligence to remedy the effects of an event of Force Majeure as soon as reasonably possible. In the event a Party's performance of an obligation under this Agreement is delayed due to a Force Majeure event, then the time for completion of the Party's obligation will be extended day-for-day, provided that an event of Force Majeure shall not extend the time for performance beyond September 30, 2028, unless otherwise agreed to in writing by the parties. If an event of Force Majeure a party's performance continues for more than 90 days, the non-affected party shall have the right to terminate this Agreement upon written notice to the affected party delivered prior to the date that performance resumes.

Section 10.9 Legal Authority: The City and the Corporation individually represent and warrant that each possesses the legal authority, pursuant to any proper resolution or action passed or taken, to enter into this Agreement.

The persons executing this Agreement on behalf of the City and of the Corporation represent and warrant that they have been fully authorized by the City and the Corporation, respectively, to execute this Agreement on its behalf and to legally bind the City and the Corporation to all the terms, performances, and provisions of this Agreement.

Section 10.10 Dispute Resolution: Upon request of either Party, an informal attempt to negotiate a resolution of the dispute shall be made. Such request shall be in writing and shall seek a meeting between representatives of each Party within 14 calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall provide for the meeting, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days, or such additional time as may be agreed to in writing by the Parties, after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a written agreement signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.

The mediation shall take place in Austin, Texas. The Parties shall select a mediator within 30 calendar days of the written waiver, within 60 calendar days of the informal negotiation meeting, or such additional time as may be agreed to in writing by the Parties. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute. If the time period for selecting the mediator has expired with no agreement on the mediator, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for at least 30 calendar days from the date of the first mediation session. The Parties will share the costs of mediation equally. If the mediation does not successfully resolve the dispute, each Party is free to pursue other remedies available to them.

Section 10.11 Entire Agreement: This Agreement contains the complete and entire agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties respecting the subject matter hereof. The terms and conditions set forth in this Agreement constitute the entire agreement between the Parties and any oral representations on the part of either Party, its representatives or assigns, shall have no force or effect whatsoever. This Agreement shall be binding on the Parties, their successors, and assigns.

[Signature page follows]

AUSTIN ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION

By: _____
Nelson Linder, President

Date: _____

CITY OF AUSTIN, TEXAS

By: _____
Spencer Cronk, City Manager

Date: _____

APPROVED AS TO CONTENT:

PARKS AND RECREATION DEPARTMENT

By: _____
Kimberly McNeeley, Director

Date: _____

APPROVED AS TO FORM:

CITY LAW DEPARTMENT

By: _____
Mary Searcy Marrero
Assistant City Attorney

Date: _____

Attachments:

- Exhibit A – Billing Package
- Exhibit B – Legal Description of Land
- Exhibit C – Operational Guidelines
- Exhibit D – Insurance Requirements

EXHIBIT A
Billing Package



City of Austin

Parks and Recreation Department
200 South Lamar Blvd, Austin, TX 78704

February 5, 2019

To All City of Austin Parks and Recreation Vendors,

Austin Parks and Recreation has two acceptable methods for submitting invoices for payment, via email or via US Postal Service. Instructions for each method are outlined below.

1. Preferred Method – Via email:

If submitting via email please use the following address only:

PARDAccountsPayable@austintexas.gov

This address should also be used to make inquiries regarding submitted invoices and payment update requests.

When submitting via email, do not forward physical copies in the postal mail. These will be considered duplicates and discarded.

If an invoice is being resubmitted or is past due, please indicate it on the invoice itself before sending the image via email.

2. Via US Postal Service:

If submitting via US Postal Service, please send invoices direct to the following address only:

City of Austin Park and Recreation Department
Financial Services Division – Accounts Payable
200 S. Lamar Blvd.
Austin, TX 78704

When submitting invoices, please make they contain the following information:

1. *Invoice Number*
2. *Date of Invoice*

3. *Vendor Name and Address* (which must match what the City of Austin Vendor Services has on file. If this has changed, please update with them by calling 512-974-2018)
4. *Date of Service*
5. *Description of services rendered or products purchased* (either of which must match the purchase request)
6. *Applicable DO or PO number*

Once properly submitted, all invoices will be processed in accordance with our contracted terms of payment – generally within 30 days of its receipt. If you have any questions, please feel free to contact us at 512-974-6754 or PARDAccountsPayable@austintexas.gov.

We appreciate your help to ensure that we can process your invoices in a timely manner. Thank you for your continued service to the Parks and Recreation Department.

Sincerely,



Illyaz

Accounting Manager

EXHIBIT B
Legal Description of Land

The Land (including any improvements) referred to in this Agreement is described as follows:

A tract or parcel of land being all of and known as ROSEWOOD VILLAGE TRACT 1, an addition in Travis County, Texas, according to the map or plat thereof recorded in Book 41, Page 43, Plat Records of Travis County, Texas.

EXHIBIT C
Operational Guidelines

Operational Description

- Facility Description
- Operational Mission Vision
- Stated Public Benefit
- Reporting
 - Annual and Semiannual Performance Measures
- Annual Goals and Objectives

Emergency Action Plan

- Accident/Injury Response
- Responses to Acts of Violence
- First Aid Administration
- Disasters or Evacuation
- Lock Down
- Inclement Weather Protocols
- Major Facility Operational Problems

General Safety

- Accident Prevention
- Disruptive or Unsafe Behavior Response/Protocol
- Staff Safety and Security
- Fire Safety
- Robbery/Burglary/Theft
- Security Systems
- Safety Equipment and Supplies
- Bloodborne Pathogen Exposure Control Plan
- Weather Safety
- Environmental Safety
- Medical Standards
- Suspected Abuse Reporting
- Facility Safety
- Required Safety Training/Certifications

Facility Operations

- General Operational Hours
- Opening and Closing Procedures
- Building Security
- Key/Code Distribution
- Cleaning Expectations
- Preventative Maintenance Procedures
- Phone Contacts
- Facility Rules
 - Maintenance: Facility, Grounds and Equipment

Preventative Maintenance Procedures
Risk Management Procedures
Material Safety Data Sheets (MSDS)
Handling Hazardous Materials
Equipment Operation
Food Establishment Requirements
Phone Contacts
Safe Location/Combination Possessors
Asset Inventory
Stolen/Lost Property Procedures
Parking
Utilities, Electrical, Telecom and Network Services
Decorations, Signs, and Alterations
Room Capacity

Personnel

General Expectations
Job Descriptions
General Hiring Procedures and Non-discrimination Regulations
New Employee Orientation
Standards of Appearance
Certifications/Training/Licenses
Work Schedule Distribution
Time and Attendance Policy/Practices
Payroll Procedures
Leave Requests
Nepotism
Family and Medical Leave Act (FMLA)
Workers' Compensation
Disciplinary Procedures and Grievances
Hostile Work Environment
Sexual Harassment
Work Environment
Ethics

Communications

Computer Use Standards
Computer Repair
Computer Access for Employees
E-Mail Protocol
Telephone Protocol
Social Media
Employee Communication
Citizen Communication
Marketing
Website

Finance

- Cash Handling Protocol
- Purchasing Processes
- General Accounting Expenditure
- Purchasing Protocols
- Accounting
- Budget Preparation/Management
- Fees Establishment
- Alternative Funding Protocols (Grants, Sponsorships, Donations, etc.)
- Auditing (Internal and External)

Administration

- Policies and Procedures Location
- Americans with Disabilities Act (ADA)
- Volunteer Protocols
- Service Animals/Inclusive Services

Program Operations

- Program/Event Evaluation
- Marketing
- Facility Reservation Information
- Insurance Requirements
- Special Events
- Event/Program Production and Implementation
- Scheduling Priorities
- Event Security and Crowd Management
- Alcoholic Beverages
- Smoking, Vaping and Tobacco Products
- Advertising and Sponsors
- Chaperones Required for Youth Events
- Catering

EXHIBIT D
Insurance Requirements

CITY OF AUSTIN - CORPORATE RISK MANAGEMENT DIVISION
INSURANCE REQUIREMENTS FOR PARK EVENTS and/or PERMITS
PROVIDE THIS DOCUMENT TO YOUR INSURANCE AGENT

Required of all Special Events, Permit Requestors, or as required by rental agreement. The REQUESTOR shall carry insurance in the types and amounts indicated below for the duration of the PERMIT/ AGREEMENT. Others providing services for this event may also be required to provide insurance as identified by the description of their services. **Requestor means:** applicant, organizer, renter, permit applicant, and/or contractor as notated in the relevant application.

Standard Insurance Requirements

(See Page 2 for: Certificate & Policy Requirements, Name and Address of City, etc.)

Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A (bodily injury and property damage) & B (personal and advertising injury). The policy shall contain the follow provisions:

- A. Products and Completed Operations with a minimum limit of \$500,000
- B. Damage to Premises Rented to You or Fire Legal Liability with a minimum limit of \$50,000
- C. Independent Contractors coverage

Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence.

Additional Insurance Requirements

(dependent on requested activities as required by PARD)

Liquor Legal Liability (ALCOHOL): If CONTRACTOR is PERMITTED and granted permission to sell or distribute alcoholic beverages, coverage for **Liquor Legal Liability** with a limit of \$500,000 shall also be provided. THIS IS REQUIRED AT ALL PUBLIC EVENTS.

Watercraft Liability Insurance: Watercraft liability insurance with a minimum combined single limit of \$500,000 per accident. Coverage must apply for bodily injury and property damage arising out of the maintenance, use, and operation of any watercraft.

Moonwalks/ Rockwalls/Other Approved Amenities: Operators must provide coverage insuring the owner/operator against liability arising out of the use of the amusement ride/device:

(A) For Class B continuous air-flow inflatables, the minimum combined single limit is **\$1,000,000 per occurrence**.

(B) For Class B amusement rides, the minimum limits are as **\$1,000,000 bodily injury and \$500,000 property damage per occurrence**; or a combined single limit of **\$1,500,000 per occurrence**.

Pyrotechnics/Fireworks: Contact the Austin Fire Department for specifications.

Aircraft/UAVs/Drones: Contact ABIA for motorized flight/aviation insurance specifications.

Professional Liability Insurance: Professional Liability Insurance Coverage. At a minimum limit of \$100,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this permit.

- **Examples required for:** commercial fitness groups, select contract instructors based on risk, movement based instruction, or similar situations.

Worker's Compensation and Employers' Liability Insurance: Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

- If a **sole proprietor**, then Worker's Compensation and Employers' Liability Insurance, does not apply to you. You will prepare a letter to place on your company letterhead, sign, date, and return to PARD. The letter documents for PARD that you are a sole proprietor and therefore do not need worker's compensation insurance. However, if you have employees performing services, this insurance is required.
- **Examples required for:** commercial fitness groups, select contract instructors based on risk, concessions, movement based instruction, or similar situations.

Insurance Certificate & Policy Provisions, Specifications, and Requirements:

All required policies* **shall be endorsed and certificates shall reflect the following:**

- City of Austin listed as additional insured (not required on Workers Compensation and Employer's Liability Insurance).**
- Waiver of Subrogation in favor of the City of Austin.**
- 30 day Notice of Cancellation in favor of the City of Austin.**

**The above endorsement requirements do not apply to Professional Liability Insurance*

ALL ENDORSEMENTS naming the CITY as Additional Insured, granting Waivers, and providing Notice of Cancellation, as well as all Certificates of Insurance shall indicate:

**City of Austin, ATTN: Parks and Recreation Department
P.O. Box 1088
Austin, Texas 78767**

The REQUESTOR must complete and forward the CITY standard certificate of insurance to the CITY **before** the PERMIT/AGREEMENT is executed as verification of coverage required in subparagraphs above. The REQUESTOR shall not commence work until the required insurance has been obtained and until such insurance has been reviewed by the CITY. Approval of insurance by the CITY shall not relieve or decrease the liability of the REQUESTOR hereunder.

The REQUESTOR'S insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best Ratings of B+ VII or better.

The "other" insurance clause shall not apply to the CITY where the CITY is an additional insured shown on any policy. It is intended that policies required in the AGREEMENT, covering both the CITY and REQUESTOR, shall be considered primary coverage as applicable.

If coverage is underwritten on a claims made basis, the retroactive date shall be coincident with the date of the AGREEMENT and the certificate of insurance shall state that the coverage is claims made and the retroactive date shall be shown. The REQUESTOR shall maintain coverage for the duration of this PERMIT/AGREEMENT and for a two year period following the end of this PERMIT/AGREEMENT. The REQUESTOR shall provide the CITY annually with a certificate of insurance as evidence of such insurance.

If insurance policies are not written for amounts specified above, the REQUESTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

The REQUESTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the PERMIT/AGREEMENT or as required in the PERMIT/AGREEMENT.

The REQUESTOR shall be responsible for premiums, deductibles, self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.

The CITY reserves the right to review the insurance requirements set forth during the effective period of this PERMIT/AGREEMENT and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, and the claims history of their industry or financial condition of the insurance company as well as the REQUESTOR.

The insurance coverages required are required minimums and are not intended to limit the responsibility or liability of the REQUESTOR.